Medicaid Reform Proposals

This week brought a number of high profile issues, including Medicaid legislation proposing sweeping reforms. The Florida Association of Counties, at Broward's suggestion, hosted a workgroup to discuss the potential impacts of the bills. While the specific effects these changes will have on Broward residents is still somewhat unclear since Broward is already part of the reform Pilot, a potential concern is the fee-for-service (FFS) component, which allows only Provider Service Networks (PSNs) to be reimbursed using this method (not Health Maintenance Organizations - HMOs), and then, only for five years. The point of the legislation seems to be to cap costs and enforce a monthly financial distribution to PSNs and HMOs based on a negotiated rate per enrollee. The State has decided to move forward with Medicaid managed care, even in the wake of research suggesting that the Reform Pilot is inefficient, ineffective and drove providers out of services networks (PSNs). Of greatest concern is the fact that the Reform Pilot failed to save the State money, but did lessen the quality of care—especially through reduced access to specialists. The House and Senate proposals remain disparate, requiring both chambers to dedicate entire committee meetings to the topic during the week of April 12th. A very brief summary of the 183-page legislation is provided below:

- Florida will be divided into six (6) geographic regions combining rural and urban areas; Broward would be in Area 5 along with Palm Beach, Martin, St. Lucie, Okeechobee, Glades, and Hendry Counties totaling 426,008 enrollees.
- AHCA will then employ a competitive bidding and selection process (driven by cost factors, as well as the availability of primary care physicians and specialists) for purveyors of managed care—HMOs or PSNs—likely to be overseen by local hospitals (House plan SCPEP 10-03); each region is anticipated to have a minimum of 3-5 plans and a maximum of 7-10 plans.
- Once the requisite managed care entities are selected and in place in each region, the state will enter contracts, requiring HMOs and PSNs to spend 85% of the funds they receive on direct patient care or face penalties.
- In SCPEP 10-03, virtually every Medicaid beneficiary would be gradually moved in to a managed care plan over the next five years; persons covered by Medicaid as recipients of SSDI
• and/or long-term care insurance will be phased in by October 1, 2012; individuals receiving primary and/or acute care will be in managed care plans by October 1, 2013; followed by persons with development disabilities, autism spectrum disorders, etc. by October 1, 2015.
• In the House plan, Miami-Dade County would be the first local government required to participate (beginning July 1, 2010) in the Pilot that Broward has been in since the inception of this concept.
• The Senate (SB1484) proposal expands the Pilot to an additional 19 counties and offers private insurance vouchers to Medicaid recipients.
• Both plans provide for PSN’s to provide mental health services.

In addition, the Senate adopted a budget amendment by Senators Negron, Haridopolos, and Gaetz regarding Medicaid which reads as follows: the agency shall prepare a federal Medicaid waiver to permit the state, through legislative enactment, to limit annual spending on the Medicaid program to the amount appropriated in the state budget. The waiver request shall include authorization for the legislature to make changes to optional eligibility groups and services in order to prevent spending more in any fiscal year than is appropriated. In addition the waiver shall request authority to revise the benefit structure and delivery system to allow Medicaid recipients to be integrated into the private insurance market through the use of state vouchers. The waiver shall include a provision to require Medicaid recipients with higher incomes to participate in program costs through coinsurance and deductibles and to be provided incentives for cost effective utilization of the health care system. The agency shall submit the waiver application to the Legislative Budget Commission for approval by September 30, 2010, before submission to the federal Centers for Medicare and Medicaid Services.

On Monday, the House met and voted out the two proposed committee bills with one negative vote by Rep. Thurston. Democrats withdrew amendments offered for consideration. The Senate will take public testimony on the House proposal this week.

Anti-Corruption Efforts

Adding to an increasingly contentious political climate was the fact that the Governor announced Thursday he is considering a special legislative session in May or June to take on the issue of anti-corruption recommendations expected from a statewide grand jury.

Permitting

SB 1126 by Sen. Altman and HB 773 by Rep. Kreegel simplifies the process that creates regional action teams so that multiple memoranda of agreement will no longer be required for each expedited permit application. SB 1126 amends existing statutes related to the expedited permitting process provided for in sec. 403.973, F.S. and transfers authority from the Office of Tourism, Trade and Economic Development (OTTED) to the Secretary of the DEP. Federally approved or delegated permitting programs with permitting timelines established in federal code are already exempt
under the existing statute and are not affected by this revision. However, it appears that the bill will add renewable energy projects including biofuels and biodiesel projects to those eligible for expedited permitting, potentially resulting in construction permitting for these projects being done by the DEP instead of Broward County environmental programs. SB 1126 has passed the Commerce Committee unanimously.

**Offshore Energy/Oil Exploration**

In the wake of President Obama’s decision to partially lift the moratorium, Rep. Cannon, incoming Speaker and Chairman of the House Select Policy Council on Strategic and Economic Planning, held multiple hearings to discuss all aspects of the prospect of offshore drilling. As hearings ended, Rep. Cannon put forth parameters for oil drilling legislation. Sen. Haridopolos, Senate President-Elect, has introduced SB 563 to allow drilling; however, there is little likelihood of passage of this legislation in this Session.

**Environmental Protection/Water Law**

SB 550, by Sen. Constantine, is a sweeping rewrite of Chapter 373, relating to the regulation of water in the state. The bill has many positive components, including those that seek to strengthen statewide stormwater regulation, protect inland waterways, set numeric limits for nutrients, and establish regional utilities to maintain and operate septic tanks. Proponents of the legislation, speaking in favor of the bill, included environmental groups like the Sierra Club, while those opposed to the bill ran the gamut from utilities to the Home Builders Association. Cities and counties have remained neutral on the legislation, supportive of many aspects of the bill, but concerned about preemptive language and costs associated with the septic tank regulations. After vociferous debate on both sides, the bill narrowly passed the Governmental Oversight and Accountability by a vote of 5 to 3.

**Fertilizer Preemption**

On Friday, HB 1445 became the vehicle for an amendment by Rep. Poppell, attempting to prohibit local governments from regulating the sale and use of fertilizer and authorizing only the State Department of Agriculture and Consumers Services (DACS) to do so. The amendatory effort was spurred by Pinellas County’s local ordinance banning the sale of certain fertilizers in the summer months and complaints from business interests, specifically large retail chains that sell fertilizer and plants grown in fertilizer, which were forced to remove those items from their shelves. Environmental groups and local governments spoke against the amendment, explaining that three years of negotiations with the fertilizer industry and comprehensive studies of the impacts of fertilizers would be undone by the amendment. Local government speakers opposed a one-size-fits-all statewide approach to fertilizer, arguing that regulation should be based on sound science that recognizes geographic, topographic and other environmental attributes. Those opposing the Poppel amendment pointed out the fiscal efficacy of source controlling pollutants, rather than waiting for a waterbody to become impaired to clean it up.
Under significant pressure, Rep. Poppel agreed to amend his amendment to remove the word “use”, so that the statewide preemption would apply only to the sale of fertilizer products. The amendment passed, with the bill and amendment sponsor vowing to continue working with local governments to ameliorate their concerns. Local governments bear significant responsibilities under the Clean Water Act, the total maximum daily load (TMDL) program, and the pending EPA numeric nutrient criteria rulemaking.

**Mover’s Bill**

HB 199 was amended to sunset an exemption to a statewide preemption that offers Miami-Dade and Broward more latitude to regulate moving companies as a result of our local ordinances. While the Senate companion, SB 320, does not currently have the sunset provision, both versions limit the local government ordinances, so that the regulation can occur only for those moving companies whose primary place of business is in the county. This is a significant departure from Broward County’s existing regulatory authority and will require Broward and Miami-Dade to work swiftly to amend the bills.

**Pill Mill Legislation**

HB 225 by Rep. Legg was heard in Health Care Appropriations on Friday and substantially amended by removing the provision which required no more than a 72 hour supply in the dispensing of controlled substances. The bill now requires practitioners dispensing controlled substances in Schedules II, III, IV, or V authorized by law to register with the Board of Pharmacy. The strike-all amendment requires the Department of Health to adopt rules establishing procedures for a statement of reference to be provided by the president of the Florida Medical Association, the president of the Florida Osteopathic Medical Association, the dean of any Florida medical school, the hospital medical chief of every licensed hospital within a 50 mile radius of the practitioner’s practice location, the president of the practitioner’s state specialty society, and if any, the president of every county medical association geographically located in the practitioner’s practice area. For physicians practicing in Broward, Miami-Dade, and Palm Beach Counties the requirement is effective September 1, 2010. For all other physicians the effective date is at the time of the next licensure renewal. The bill requires AHCA to contract, by December 1, 2010, with a multistate electronic prescribing network to provide criminal justice agencies and the Department of Health with access to prescription drug medical histories. The strike-all amendment was vigorously debated. Despite a good deal of opposition, including from the Office of Drug Control, and questions regarding the implementation of the 2009 legislation for an electronic prescription drug tracking system already underway, the strike-all was adopted on a 7-5 vote (2 members had excused absences).
Community Associations

Both HB 561 by Rep. Bogdanoff and SB 1196 by Senators Fasano and Ring were heard this week. The bills include numerous provisions regarding individual unit owners’ property insurance coverage, association board of directors, association records, financial reporting, bulk buyers, foreclosure assessments, and life safety issues. Relating to life safety issues, the bills were amended to more closely match one another including:

- Exemption for condominiums (or cooperative buildings) less than four stories and having exterior corridors from the requirement of installing a manual fire alarm system.
- A vote to extend the deadline for retrofitting the common areas of a high-rise (defined as over 75 feet) from 2014 to 2019.
- Elimination of the restriction on unit owners to waive the retrofit requirement. (current law allows for a 2/3 vote affirmative vote to forego retrofitting except for high-rises).
- Repeal of the requirement to provide alternative power supplies to elevators and alarms during emergencies.
- A vote of the association members to exempt a community from the requirement to retrofit of elevators to operate when power is not available.
- A delay in the retrofit of a special access key for elevators in condominiums and cooperatives until the elevator is replaced or requires major modifications.
- A community that has not retrofitted and not held a vote by December 31, 2016 must retrofit by December 31, 2019.

Additionally, both bills provide for collecting association fees from tenants after appropriate notification and for limiting the use of common areas for a reasonable period of time when an owner or tenant is over 90 days late in remitting association fees. The limitation of common areas excludes access to units, parking lots, elevators, and utility services (language in the House version is to be clarified). The bills also amend provisions regarding liens requiring that a claim of lien secures all unpaid assessments that accrue after the recording of the claim of lien and before the entry of a certificate of title (in the Senate version) or final judgment (in the House version).

Building Safety bills, SB 648 by Sen. Bennett and HB 663 by Rep. Aubuchon and others, also provide for elevator retrofit extensions, permitting the use of uniform lock boxes as an alternative in providing emergency elevator access to fire departments, and repealing the requirement for alternate emergency power generators that are 75 feet or higher.
Growth Management

SB 1742, by Sen. Bennett, defines the term "transit oriented development," provides for the expedited review of comprehensive plan amendments that implement transportation concurrency exception areas, provides for the sharing of costs of mitigation for transportation concurrency and provides for landowners or developers to request a transportation concurrency backlog area for a development area. The bill was scheduled to be heard in the Senate Transportation Committee last week. Sen. Baker filed an amendment that would have allowed a DRI to direct its proportionate share payment to fund regionally significant mobility improvements as identified in an MPO’s long-range plan or the local government’s concurrency management plan. However, SB 1742 was again temporarily postponed and not heard by the Committee. This is the second time a hearing on the bill has been postponed, having first been postponed after a lengthy discussion during week 4. Given the bill has no House companion it is likely the bill is dead for this Session.

SB 2452, also by Sen. Bennett, is intended to preserve permit extensions, DRI exemptions and city or county adopted comprehensive plan amendments that were granted and were available as a result of SB 360 from the 2009 legislative session. SB 360 is currently under challenge in the courts and SB 2452 avoids the effects of an adverse decision on SB 360 by reenacting and reauthorizing the permits extensions, available exemptions, and plan amendments granted to implement the transportation concurrency exception areas pursuant to SB 360. The consensus is that permits issued for developments that received approval should stand even if a legal challenge to SB 360 is successful. SB 2452 passed Judiciary and is now ready for floor action. Its companion, HB 7099, by the Military and Local Affairs Policy Committee will be heard on the House Floor on Tuesday, April 13th.

Misrepresentation of Military Status

SB 1824 (HB 1445 Rep. Sachs), sponsored by Sen. Gelber, unanimously passed the Senate Criminal Justice Committee on Wednesday, April 7th. The bill prohibits a person from falsely representing himself or herself as a member of or representing the U.S. Armed Forces or the National Guard for the purpose of solicitation of charitable contributions or participation in a charitable or sponsor sales promotion. SB 1824 now moves to the Senate Criminal and Civil Justice Appropriations Committee and HB 1445 is now on second reading on the House Calendar.

Economic Development Bills

HB 697 (SB 1430 Sen. Haridopolos), sponsored by Reps. Precourt, Ambler, and Carroll unanimously passed the House on third reading, 117-0, on Tuesday, April 6th. The “Film Florida” bill provides for tax credits of 20 percent of qualified expenditures. Additionally, filmmakers who make “family friendly” films based on Motion Picture Association of America guidelines for a G rating would be eligible for a 5 percent bonus credit. The bill also includes a requirement that a production that takes advantage of this tax credit shall include a thirty second trailer highlighting Florida. The measure is still awaiting Senate approval.
SB 1856, the Qualified Target Industry Tax Refund Program (QTI), passed 5-0 in the Senate Finance and Tax Committee on April 6th. The Committee Substitute moves to the Senate Transportation and Economic Development Appropriations Committee and is scheduled to be heard on April 13th.

HB 7201, the “Florida Jobs Bill,” sponsored by Rep. Bogdanoff, was placed on the House Special Order Calendar and passed 112-0 on April 6th. If the Senate refuses to concur with the Committee Substitute, the measure must go to conference.

**TABOR**

The bill, commonly referred to as the “Taxpayers Bill of Rights” (TABOR), has been withdrawn from all committees of reference for this legislative session.

**Other Bills of Interest:**

**Sovereign Immunity:** CS/CS/HB 1107, by Rep. Nehr, was heard in the House Criminal & Civil Justice Policy Council and amended identical to its Senate companion, SB 2060, which is now in House Messages after passing the Senate during Week 4. The bill increases the sovereign immunity caps to $200,000 per claim and $300,000 per incident or occurrence effective October 1, 2011.

**Seaport Investment:** SB 1992 by Sen. Ring was heard in the Senate Commerce Committee and amended to expand the projects eligible for funding through the new Florida Ports Investment Corporation. In addition to funding on-port projects eligible for federal funding assistance under freight mobility criteria established under specified federal programs, the Corporation is also directed to fund projects that increase ports’ capacity to handle freight, are consistent with port master plans, and improve economic productivity for the state and region where the project is located. The bill is now scheduled for a hearing on April 13th before the Senate Banking and Insurance Committee. Its House companion, CS/CS/HB 1169, by Rep. Ray, passed the House on April 6th by a vote of 114-0.

**Seaport Infrastructure Permitting:** CS/HB 963 was heard in the House Full Appropriations Council on Education and Economic Development and passed unanimously as a committee substitute. As passed, the bill authorizes the application and issuance of port conceptual permits. The bill provides requirements and procedures relating to such permits for DEP & Board of Trustees of the Internal Trust Fund. FDOT must include certain projects & funding allocations in legislative budget requests. The bill also removes a requirement that FDEP and the Florida Ports Council enter into a memorandum of agreement to provide supplemental permitting processes for seaport projects, giving DEP direct authority to provide such processes instead. The bill revises requirements relating to seaport maintenance dredging and authorizes seaports to enter into public-private agreements for certain projects. The bill goes to the calendar where it will be available for consideration on the House Floor. SB 2000 by Sen. Ring, the Senate companion, will be heard before the Senate Transportation and Economic Development Appropriations Committee on April 13th.
Term Limits:  HJR 495 was discussed in the House Policy Council last week, its first committee of reference. The joint resolution proposes a constitutional amendment to extend term limits for state senators and representatives to 12 consecutive years, an increase of 4 years to the current term of office. The joint resolution also imposes term limits on county and municipal officers, disqualifying a county or municipal officer from appearing on the ballot if, by the end of their current term, such officer would have served 12 consecutive years in office. The Council discussed the bill but ran out of time before a formal vote on the measure could be taken. It is unlikely the bill will pass this Session. The Senate companion, SB 598, has yet to be heard in its first committee of reference and it’s extremely doubtful a hearing is forthcoming.

Children’s Services Councils:  HB 1227 died on a 7-7 vote in House Military and Local Affairs. The sponsor, Sen. Negron, was present for the vote and indicated that he would file the bill again next year.

Public Retirement Plans:  SB 1902 would eliminate overtime, vacation, and sick leave in the computation of final average compensation was not heard in Community Affairs. Sen. Bennett indicated a study regarding the issues would take place over the summer.

Sexual Predators:  HB 119 is on Special Order Calendar for April 13th and its companion, SB 1284 is scheduled to be heard in its third committee stop, Senate Judiciary on April 13th. The Senate bill has one more reference following that stop.

Background Screening:  HB 7069 has passed the House floor and is in Senate Messages. Companion bill, SB 1520 is in its last committee of reference and scheduled to be heard on April 13th.

Homelessness:  HB 923 establishes a voluntary contribution program through motor vehicle registration for grants aimed at fighting homelessness. The bill has passed all its committees of reference and is on the Calendar in the House. A similar bill by Sen. Crist is scheduled to be heard next week.

Chinese Drywall:  SB 2160 and HB 965, which provide for an assessment of properties with Chinese Drywall at $0 for a period of time and also provide for repeal, are both in their last committees of reference.

Local Government:  CS/SB 1004 authorizes a board of county commissioners to negotiate the lease of certain real property for a limited period. It also authorizes transfers of right-of-way between local governments by deed. Sen. Crist was concerned that the FAC was absent at the committee meeting and sponsor Sen. Gelber did not know their position. The bill passed through the committee unanimously.

Senior Services Independent Special Districts:  SB 146 was temporarily postponed in its third of four committee references.
Juvenile Justice Facilities and Programs: SB 1012 defines the term “ordinary medical care in department facilities and programs.” The bill requires DJJ adopt rules to ensure the effective delivery of services to children in their care and custody. The bill also requires DJJ to coordinate its rule adoption process with DCFS and APD to ensure that their rules do not encroach upon the jurisdiction of those agencies. This was the third committee stop for the bill and it passed unanimously.

Electronic Health Information: HB 911, which removes barriers to developing and implementing electronic health records, was heard and passed. SB 958 by Sen. Ring will be heard next week.

Local bills heard and approved this week include: HB 1129, Tamarac Annexation; HB 1209, City of Fort Lauderdale Annexation (amended); HB 1425, Office of Inspector General; HB 1621, North Springs Improvement District; HB 1215, Southwest Ranches South Broward Utility Advisory Board; and HB 1295, City of Lauderhill Annexation.

Local bills not heard and will not be heard because there are no more House committee meetings include: HB 1549, City of Parkland Annexation; HB 1393, Broward Independent Fire District; HB 1131, Traffic Violations on Private Roads; and HB 1123, Municipal Law Enforcement Funding.